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IN THE COURT OF APPEALS OF INDIANA

M.H.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0604-JV-182
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT, JUVENILE DIVISION
The Honorable Geoffrey Gaither, Magistrate
Cause No. 49D09-0512-JD-5309

October 18, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

M.H. appeals the twelve-month commitment to the Department of Correction that he received following his guilty plea. We affirm.

Issues

M.H. raises two issues for review, which we restate as the following:

I. Whether the juvenile court was within its discretion in committing M.H. to the Department of Correction for a determinate disposition of twelve months; and

II. Whether M.H. should have been awarded credit time for pre-disposition detention.

Facts and Procedural History

On December 12, 2005, fifteen-year-old M.H. and three friends walked into the Food Plus store on Allisonville Road in Indianapolis, pointed a paint gun at the employees, and took money from the store. Tr. at 12, 17-10. That same day, police arrested M.H. and transported him to the juvenile detention center. Appellant's App. at 13-14. M.H. was alleged to be a delinquent child for committing acts that, if committed by an adult, would constitute class B felony armed robbery, carrying a handgun without a license, and pointing a firearm. *Id*. at 15.

On January 9, 2006, the date of his denial hearing, M.H. and the State tendered a plea agreement. Per the agreement, M.H. admitted to the robbery allegation and agreed to testify truthfully against his co-defendants. For its part, the State dismissed the other two charges as well as a separate, previously charged count of what would be class D felony theft if committed by an adult. *Id*. at 31-33, 21. The court accepted the agreement, which left sentencing open up to a determinate sentence of eighteen months. *Id*. On March 2, 2006, the

juvenile court held a dispositional hearing at the conclusion of which it committed M.H. to the Department of Correction for a determinate period of twelve months, required counseling, and ordered him to successfully complete a vocational and/or GED program. *Id.* at 8-9; Tr. at 23-30.

Discussion and Decision

I. Twelve-Month Commitment to Department of Correction Was Within Discretion

M.H. asserts that the juvenile court abused its discretion in committing him to the Department of Correction for twelve months when a less restrictive alternative was available and allegedly more appropriate. Specifically, he contends that either home detention or a suspended commitment with strict terms of probation should have been ordered in light of his lack of prior juvenile sanction, admission of guilt, agreement to testify against his co-defendants, and special educational needs.

The choice of a specific disposition for a delinquent child is within the discretion of the trial court, subject to the statutory considerations of the welfare of the child, the safety of the community, and a statutory policy of favoring the least harsh disposition. *A.M.R. v. State*, 741 N.E.2d 727, 729 (Ind. Ct. App. 2000). We may overturn the court's disposition order only if we find that the court has abused its discretion. *A.D. v. State*, 736 N.E.2d 1274, 1276 (Ind. Ct. App. 2000). An abuse of discretion occurs if the court's decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom. *E.H. v. State*, 764 N.E.2d 681, 684 (Ind. Ct. App. 2002), *trans. denied*.

A juvenile court is statutorily authorized to award wardship of a delinquent child to "the department of correction for housing in a correctional facility for children[.]" Ind. Code § 31-37-19-6(b)(2)(A). Of particular relevance, a juvenile court faced with a child who

> is at least thirteen (13) years of age and less than sixteen (16) years of age; and [who has] (2) committed an act that, if committed by an adult, would be: . . . (E) robbery (IC 35-42-5-1) if the robbery was committed while armed with a deadly weapon or if the robbery resulted in bodily injury or serious bodily injury; [may] order wardship of the child to the department of correction for a fixed period that is not longer than the date the child becomes eighteen (18) years of age, subject to IC 11-10-2-10.

Ind. Code § 31-37-19-9(b)(1). The following factors must be considered when entering a dispositional decree:

> If consistent with the safety of the community and the best interest of the child, the juvenile court shall enter a dispositional decree that:
> (1) is:
> (A) in the least restrictive (most family like) and most appropriate setting available; and
> (B) close to the parents' home, consistent with the best interest and special needs of the child;
> (2) least interferes with family autonomy;
> (3) is least disruptive of family life;
> (4) imposes the least restraint on the freedom of the child and the child's parent, guardian, or custodian; and
> (5) provides a reasonable opportunity for participation by the child's parent, guardian, or custodian.

Ind. Code § 31-37-18-6.

The dispositional order for M.H. states:

> The Court now orders the findings and information contained in the Pre-Dispositional Report incorporated in this order and made the findings of the Court.
>
> The Court bases its reasons for disposition on the findings of fact and, pursuant to I.C. 31-37-18-6, and specifically further finds as follows:

That the Respondent has *no prior history of delinquent activity in Marion County.*

The delinquent act is heinous or of an aggravating character, to wit: Robbery/FB

The court further finds its disposition is the least restrictive alternative to insure the Respondent's welfare and rehabilitation.

The Court, after reviewing the Pre-Dispositional Report and hearing statements and evidence presented to the Court regarding the disposition of this cause of action, now finds and orders as follows:

The Respondent is in need of care, treatment, rehabilitation or placement.

The parent/guardian/custodian does need to participate in a plan of care or treatment for the Respondent.

Refer to Preliminary Inquiry
Refer to Pre-Dispositional Report

. . . .

The Court as part of its disposition, orders Pursuant to Ind. Code 31-37-19-10, [sic] finds that the respondent committed an act that would be: a felony against a person and was at least 14 years old at the time the delinquency act was committed *and has unrelated prior adjudications of delinquency for acts that would be felonies if committed by [an] adult*.[1]

Appellant's App. at 8-9 (emphases added).

[1] This highlighted text seems inconsistent with the reference to "no prior history of delinquent activity in Marion County" that appears earlier in the dispositional order. Moreover, our review of the materials provided indicates that although M.H. does not have an unblemished legal history, he has *no* unrelated prior *adjudications* of delinquency for acts that would be felonies if committed by an adult. Therefore, Indiana Code Section 31-37-19-10 was inapplicable to a proper determination of a disposition for M.H. Rather, under the circumstances presented, the statutory authority that the juvenile court should have applied is Indiana Code Section 31-37-19-9(b)(1), *supra*. Neither M.H. nor the State raised this error, perhaps because Indiana Code Section 31-37-19-9(b)(1) allows for an order of wardship to the Department of Correction for a fixed period not longer than the date the child becomes eighteen. Given that M.H. was fifteen years old when he committed the act that would be robbery if committed by an adult, under Indiana Code Section 31-37-19-9(b)(1), he could have been eligible for a determinate sentence greater than the two-year maximum term provided for by Indiana Code Section 31-37-19-10. In any event, the plea agreement included an eighteen-month cap, which is less than the disposition provided for in either Indiana Code Section 31-37-19-9(b)(1) or Indiana Code Section 31-37-19-10.

At the dispositional hearing, the juvenile court provided additional insight into its decision to order the twelve-month determinate sentence.

> The Court: You know the difference between right and wrong, why did you do this. How much money did you think you were going to get and why couldn't you go out and get a job like everybody else? Why did you put yourself at risk as well as those people? You know had the State of Indiana decided to ask for Waiver you would be looking at anywhere from a minimum of six, maximum twenty years in an adult facility for this very offense. You don't look like you could do look like you can do six minutes in an adult facility and had things [gone] sour someone could have been seriously injured or worse now we are talking about life or maybe the death penalty for a couple hundred dollars. You can stand on the street corner and beg for that. Why? What was going on that you thought that this was okay? How did you think that you were going to get away with this? I guess I got nothing by questions but tell me something.
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> The Court: Well your son's case is uh is not like [sic] unfortunately many other cases that we have had. Young black male, age thirteen to sixteen, from a single family household, who is under educated with educational challenges, finds himself getting caught up in the system. And uh the system's response is not always the one that anyone would like. (inaudible) perspective from somebody else despite all of the challenges that he has and despite what he might think is lacking at home. None of this excuses his activity, his conduct because there are a lot more people that have a lot more challenges than [M.H.] does, that don't pick up guns and go rob people. Even the uh the punishment that is outlined in the code book for juveniles is uh I am not going to say stiff or or tough but it's it's uh it's firm. It can require that he can be ordered to the Department of Correction for two years. Part of the best years of your teenage life.
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> . . . .
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> The Court: Ok. Alright. Alright [M.H.] sir the Probation Department has recommended that you be committed to the Department of Correction. I am going to accept that recommendation sir. Given the uh facts and circumstances in this matter I find that that is the least restrictive alternative available. I am going to order you committed to the Department of Correction under the determinate sentencing statute. I am going [to] order that you be placed there for twelve months. Order that you participate in the individual counseling program you are to follow all recommendations. You are to continue with your education. Show the other charges dismissed. Good luck to you [M.H.].

Tr. at 27-30.

In the adult context, juvenile criminal history may be used as an aggravating factor, and lack of prior significant criminal history may be used as a mitigating factor. *See Kincaid v. State*, 839 N.E.2d 1201, 1204 (Ind. Ct. App. 2005); *Clark v. State*, 808 N.E.2d 1183, 1195 (Ind. 2004). Similarly, in the juvenile context, prior history is relevant in determining a proper disposition. *See M.B. v. State*, 815 N.E.2d 210, 215 (Ind. Ct. App. 2004). According to the pre-dispositional report, which was incorporated into the dispositional order, M.H. "is a 15 year old black male pending disposition under his second and third complaints. Youth has no prior true finding." Appellant's App. at 35. The plea agreement references a class D theft charge, which appears to have been filed in October 2005, seems to be the "second" complaint, and was ultimately dismissed as part of the current plea agreement. *Id.* at 31, 21. The pre-dispositional report notes that M.H. was on informal home detention at the time of the current offense, has been in counseling before, and has been in trouble at school. *Id*. at 40. The same report lists September 29, 2004 charges of battery and disorderly conduct, and a December 2, 2004 charge of battery, all three of which were apparently dismissed. *Id*. at 33. Thus, while it is true that M.H. has no prior true findings, this is not his first foray into trouble. As such, the court did not abuse its discretion when it did not attach more mitigating weight to his lack of prior juvenile adjudication.

As for M.H.'s admission that he committed the present offense and his agreement to testify against his co-defendants, these need not have been given substantial weight in light of the timing, the strength of the State's case, and the benefit received. M.H. waited until the day of his denial hearing to submit the plea agreement. As a result, the State had to expend

more resources on the case than it would have had M.H. immediately agreed to admit the robbery charge and to testify against his co-defendants. Also, given the circumstances, it does not appear that the State would have had much difficulty proving its case, thus the value of M.H.'s plea to the State is further diminished. Moreover, M.H. already received a substantial return for his cooperation in that three charges were dismissed. *Cf. Field v. State*, 843 N.E.2d 1008, 1012 (Ind. Ct. App. 2006) (noting that not every guilty plea is necessarily a significant mitigating circumstance, especially where defendant "reaped a substantial benefit by pleading guilty because the State dismissed at least one charge in this case and two pending charges in another unrelated case."), *trans. denied*.

We next examine M.H.'s argument regarding his special needs. M.H. maintains that he suffers from attention deficit and hyperactivity disorder, has been in special education classes for most of his life, and "scored particularly low in the areas of 'anxious/passive,' 'emotional,' and 'social problems' during psychological testing in 2001." Appellant's Br. at 6 (citing Appellant's App. at 38). The records certainly support M.H.'s assertion that he has special educational needs as well as other issues. Appellant's App. at 37-38.[2] Yet, as the

[2] We do, however, question M.H.'s argument about "low scores." The Psychological Information section of the pre-dispositional report notes that he has a full scale IQ of 89 and then states:

> The youth's social/emotional behavior scale problems (*with score of 70+ being deemed significant*) were as follows:
> Conduct Problems 80
> Inattentive 70
> Anxious/Passive 65
> Emotional 69
> Social Problems 61
> Conner's ADHD Index 78
> The youth, during 2001, was given a daily modification service in social studies and science for a duration of one year. Group counseling in small groups once a week for anger management and conflict resolution was administered as well. It also noted that, "If

excerpts from the hearing clearly indicate, the juvenile court considered these challenges. Stressing that many others deal with more difficult challenges and do not resort to delinquent acts, the court did not attach substantial weight to M.H.'s special needs/problems. Tr. 27-30. Indeed, it need not have assigned as much weight as M.H. would have liked. *Cf. Henderson v. State*, 848 N.E.2d 341, 344 (Ind. Ct. App. 2006) (citing *Smallwood v. State*, 773 N.E.2d 259, 263 (Ind. 2002), for proposition that trial court is not obligated to weigh mitigating factor as heavily as defendant requests).

We point out that the plea agreement and the relevant statute authorized a longer term for the serious delinquent act that M.H. committed. However, the court thoughtfully considered the particular circumstances and the rehabilitative goals of the juvenile justice system and found that the least restrictive and most appropriate alternative available was a twelve-month determinate sentence at the Department of Correction, with individual counseling and a vocational/GED program. Case law supports this decision. *See Madaras v. State*, 425 N.E.2d 670, 672 (Ind. Ct. App. 1981) (noting in some instances, confinement may be one of the most effective rehabilitative techniques available: "A delinquent child's first exposure to the consequences he will face should he continue to break the law may indeed be the best treatment available in helping a young person readjust his values and priorities in life."); *see also B.K.C. v. State*, 781 N.E.2d 1157, 1170-72 (Ind. Ct. App. 2004) (affirming

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> clinically significant behaviors do not subside, L.D. (learning disabled) may not be the most handicapping condition . . . ."

Appellant's App. at 38 (emphasis added). The italicized portion would seem to indicate that those areas where M.H. scored *70 or above* are the problematic ones – not the areas where he had "low scores." Without more explanation by the parties or in the materials provided, it is unclear how to interpret these scores. Regardless, our result is unaffected.

eighteen-month determinate sentence for delinquent act that would constitute robbery if committed by adult); *M.B.*, 815 N.E.2d 210 (affirming twelve-month determinate sentence for delinquent act that would constitute battery if committed by adult).

Keeping in mind the juvenile court's "wide latitude and great flexibility in dealing with juveniles," *C.T.S. v. State*, 781 N.E.2d 1193, 1203 (Ind. Ct. App. 2003), *trans. denied*, we cannot say that M.H.'s disposition was clearly erroneous or against the logic and effect of the facts and circumstances, or the reasonable, probable, and actual deductions to be drawn therefrom. *See E.H.*, 764 N.E.2d at 684.

II. No Credit Required for Juvenile's Detention Before Determinate Sentence

M.H. next asserts that even if we uphold his "twelve-month determinate sentence in the Department of Correction, remand is required to grant M.H. eighty (80) days credit toward that sentence for the time he spent in detention before disposition." Appellant's Br. at 9. M.H. was held in the custody of the Marion County Juvenile Detention facility from December 12, 2005 (arrest date) through March 2, 2006 (disposition hearing). However, at the dispositional hearing, there was no discussion about credit time, and none was awarded.

Six days after M.H. filed his reply brief, our supreme court cleared up this previously unsettled issue, stating: "We believe that the inherent difference between the juvenile delinquency and adult criminal justice systems dictate that a juvenile offender is not entitled to credit for time served in detention prior to sentencing." *J.D. v. State*, 853 N.E.2d 945, 947 (Ind. 2006); *see also A.E. v. State*, 853 N.E.2d 950 (Ind. 2006). The *J.D.* opinion offered the following rationale:

> The broad authority of the juvenile court to fashion dispositional alternatives for juvenile offenders discussed in cases like *N.D.F.* [*v. State*, 775 N.E.2d 1085, 1089 (Ind. 2002)] and [*In re*] *Tina T.*[, 579 N.E.2d 48 (Ind. 1991)] leads us to conclude that the law does not require that a juvenile offender be provided credit for time served in pre-disposition detention. Expressed in the positive, the juvenile court's broad authority to fashion dispositional alternatives extends to discretion over how much, if any, of the time the juvenile offender has spent in pre-disposition confinement is entitled to credit. Expressed in the negative, requiring credit for the time a juvenile has spent in pre-disposition confinement would impermissibly impinge upon the juvenile court's broad authority to fashion dispositional alternatives.
>
> . . . .
>
> We do not believe that the enactment of these "determinate sentencing" provisions affects our holding.

J.D., 853 N.E.2d 948-49.[3] Bound by this precedent, we cannot require an award of credit for the eighty days M.H. served in detention prior to being ordered to serve his twelve-month determinate sentence.

In a related argument, M.H. cites article I, section 23 of the Indiana Constitution's prohibition on legislation that confers special privileges or immunities. *See* Appellant's Br. at 10-11. The argument in its entirety is: "Denying pretrial credit time to juveniles sentenced to a fixed or determinate sentence when such credit time is awarded to adult criminal defendants or juveniles waived into adult court violates this provision." *Id*. Although it declined to give the issue extended treatment, our supreme court was seemingly unimpressed with this argument. *See A.E.*, 853 N.E.2d at 951 (noting that "the Court of Appeals, in a different context, has rejected the claim that differences between the juvenile and adult criminal laws and procedures create unconstitutional disparate treatment under

[3] Our supreme court also cited favorably the portion of the Court of Appeals' *J.D.* decision, which limited *C.T.S.*, 781 N.E.2d 1193, a juvenile case that was remanded for time served because it was an unusual situation involving an "extraordinary period of months awaiting disposition, more akin to the constitutional

article I, section 23," and citing *Gall v. State*, 811 N.E.2d 969 (Ind. Ct. App. 2004), *trans. denied*, and *Person v. State*, 661 N.E.2d 587 (Ind. Ct. App. 1996), *trans. denied*). Absent novel or more detailed argument on this issue, it would be improper for us to conclude that the juvenile court abused its discretion in not awarding credit time on this basis.

Affirmed.

BAKER, J., and VAIDIK, J., concur.

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right of speedy trial." *J.D.*, 853 N.E.2d at 949 (citing *J.D. v. State*, 826 N.E.2d 146, 147 (Ind. Ct. App. 2005), *trans.granted*). M.H. does not attempt to equate his situation to that of C.T.S.